

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Louis Gareis & Lillian Gareis,
Plaintiffs

Case No. 16-cv-4187 (JNE/FLN)
ORDER

v.

3M Company &
Arizant Healthcare, Inc.,
Defendants.

The above-captioned case is a member case in the MDL *in re Bair Hugger Forced Air Warming Devices Products Liability Litigation*, 15-md-2666. A jury was empaneled for this case today. After voir dire, the parties objected to snippets of deposition testimony from Dr. Bradley Presnal, Louis Gareis's orthopedic surgeon. These objections are sustained for one of two reasons.

In the first snippet, to which Defendants object, Presnal speculates from a hypothetical. Presnal Dep. 33-34. This snippet's relevance depends on the hypothetical, but that hypothetical is not supported by sufficient proof. Fed. R. Evid. 104(b). Defendants' objection is thus sustained because the first snippet is irrelevant. Fed. R. Evid. 402.

For the rest, to which the parties variously object, Presnal opines "based on scientific, technical, or other specialized knowledge" but his opinions have not been qualified or disclosed as expert testimony. Fed. R. Evid. 701(c); Presnal Dep. 139-40, 142-45, 163-64. Because Presnal here opines as a lay witness, the objections are sustained. Fed. R. Evid. 701.

IT IS SO ORDERED.

Dated: May 15, 2018

s/ Joan N. Ericksen
JOAN N. ERICKSEN
United States District Judge